IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Second Appeal No. 609/2004

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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CORAM : A.P. Lavande, J.
Dated : November 21 , 2006

Heard Mr. Shiralkar, Advocate for the appellant.

By this appeal, the appellant takes exception to the judgment and decree dated 5.7.2004 passed by 4th Adhoc Additional District Judge, Chandrapur in Regular Civil Appeal No.23/2001 dismissing the appeal against judgment and decree dated 22.12.2000 passed by 2nd Joint civil Judge, Jr. Dn. Chandrapur in Regular Civil Suit No.63/1993 dismissing the suit filed by the plaintiff.

The plaintiff has filed the above suit for specific performance against defendants in respect of plot nos. 9 and 11 (the suit plots) against defendants and one

Radhabai Wasekar who died during pendency of the suit. It was the case of the plaintiff that original defendant no.4 i.e. respondent no.3 herein entered into an agreement with the plaintiff acting on behalf of defendant nos. 1 to 3. The trial Court did not accept the case set up by the plaintiff, inter alia, on the ground that the plaintiff had not proved oral agreement and secondly on the ground that the plaintiff had not established that respondent no.3 had an authority to enter into agreement with the plaintiff on behalf of the original defendant nos. 1 to 3. This finding of the trial Court was primarily arrived at on the ground that neither the plaintiff had proved oral agreement nor had filed any authority in favour of original defendant no.4 to enter into agreement on behalf of defendant nos. 1 to 3. This finding of the trial Court which has been confirmed by the lower appellate Court, in my opinion, has been arrived at upon proper appreciation of the evidence led by the parties and, therefore, it cannot

be said to be perverse warranting interference in second appeal. Once the finding that there was no valid agreement between the plaintiff and defendant nos. 1 to 3 was arrived at which was a finding based upon legal evidence, no fault can be found with the decrees passed by both the Courts below. No substantial question of law is involved in the appeal. Hence, the appeal is summarily rejected.

JUDGE

A.